SUPREME COURT, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 953

D. J. MILLER,

Petitioner,

v.

COUNTY OF LOS ANGELES,
a Political Subdivision of the State of California,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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TABLE OF CONTENTS

OPINION BELOW 1
JURISDICTION 2
QUESTIONS PRESENTED 2
STATUTES INVOLVED 2
STATEMENT OF THE CASE 3
REASONS FOR GRANTING THE WRIT 6
CONCLUSION 12

CONTENTS OF APPENDIX

Appendix A - Decision of the United States Court of Appeals for the Ninth Circuit 13
Appendix B - Order Denying Petition for Rehearing 16
Appendix C - Statutes Involved 17
Revenue and Taxation Code of California 17
Civil Procedure Code 18

TABLE OF CASES

City of Bakersfield v. Miller, 46 Cal. Rptr. 661 7
Citizens Suburban Co. v. Rosemont Development Co., 53 Cal. Rptr. 551 (Sept. 1966) 11
Cook v. Katiba, 190 So.2d 309 (Fla. 1966) 10
Glus v. Brooklyn Eastern District Terminal, 79 S. Ct. 760 11
Hoffman v. City of Redbluff, 47 Cal. Rptr. 553 7
McKenna v. Wallace, 344 F.2d 432 (1965) 8
Mulkey v. Reitman, 50 Cal. Rptr. 881 8
Mullane v. Central Hanover Tr. Co., 339 U.S. 306, 20 S. Ct. 410 9
Schroeder v. City of New York, 83 S. Ct. 279 . . . . . 8, 9

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

Petitioner prays for a Writ of Certiorari to review the judgment of the U. S. Court of Appeals for the Ninth Circuit.

OPINION BELOW

The decision of the Court of Appeals is reproduced herein as Appendix "A".

JURISDICTION

The judgment of the Court of Appeals was entered on July 21, 1966. Petition for a rehearing en banc was denied on September 21, 1966, and is reproduced herein as Appendix "B". The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

QUESTIONS PRESENTED

Whether without notice to the property owner as prescribed by law although his address was available, the County of Los Angeles, California may acquire by confiscation or induced forfeiture the real property of Petitioner worth over sixty times the amount of the delinquent tax debt under circumstances where the legal description of the property was erroneously changed, compounding and supplementing verbal misinformation concealing the fact that the property was to be or had been acquired.

Whether the Statutes of Limitations of one year to file legal action are overruled by the due process requirements of the Fourteenth Amendment of the Constitution of the United States backed up by other Doctrines of Law or the Statute of Limitations of three years after discovery of mistake to file action.

STATUTES INVOLVED

The pertinent provisions of Sec. 175, 3521 and 3809 (one year limitation on action); 3358, 3799 (notices) of the Revenue and Taxation Code of the State of California, and Sec. 338 of the Civil Procedure Code, Subdivision 4 (three year limitation on action) are set forth in Appendix "C".

STATEMENT OF THE CASE

In December 1963, Petitioner filed the complaint in the Federal District Court at Los Angeles, California over ownership of his 200 acres of rough mountainous land but valuable, lying just beyond respondent's smog zone, confiscated because of delinquent taxes. Respondent did not answer the complaint; the court granted its motion to dismiss on various grounds including lack of jurisdiction.

The Appellate Court of the Ninth Circuit reversed and remanded, 341 F.2d 964, holding that there was jurisdiction under a *constitutional question* but not by reason of diversity of citizenship. After remand, the District Court granted the county's motion for summary judgment; on the second appeal the Appellate Court affirmed.

The county has relied throughout on Statute of Limitations of one year. The Court of Appeals affirmed on this basis.

In the proceedings below, the respondent cited decisions of the California Courts. Petitioner has contended that they were not applicable as well as out of context with this case and he relied on the due process clause of the Fourteenth Amendment supported by the doctrines of equitable estoppel, constructive trust, as well as constructive fraud.

Although the Court of Appeals reversed because of the "constitutional question," the District Court made no ruling on these doctrines as applied to the strange lack of *due process:* circumstances in the confiscation.

The reason urged for not filing suit sooner was that petitioner did not know that his property had been acquired by the county until a date within one year from the time of filing suit. The reason he did not know sooner was that the county furnished misinformation which also prevented timely redemption of the delinquencies.

In the administrative proceedings leading to the complaint a long correspondence ensued with various officers of the respondent and it was not until receipt of their letter[1] dated April 30, 1963 (less than a year before the complaint was filed), that petitioner actually knew that it was his property, that is, the property in question.

In correspondence prior to said letter, the legal description of the land was erroneously described by respondent as being a legal description consisting of only ten acres but labeled forty acres. Not until the case reached the Appellate Court on the second appeal did the county admit the legal description furnished petitioner was not of his land. In the District Court, plaintiff (petitioner herein) submitted *"Exhibit C" (Cl. Tr. 114)* to his motion for Judgment on the Pleadings which the respondent in its brief on the second appeal discussed as follows:

> ". . . and that on January 10, 1962, in response to a letter from appellant apparently dated December 16, 1961, he was advised by the tax collector that *the property* had been deeded to appellee on October 19, 1960 (Exhibit C, Cl. Tr. 114)." (Emphasis supplied)

---

[1] The text of the letter is:

"In reply to your letter of April 18, 1963, to Mr. John D. Cahill, Deputy County Counsel regarding the description of the property in Section 15 T5N R17W please be advised that it was assessed as two separate parcels, described as follows:

160 acres NW 1/4 of Sec. 15 T5N R17W and 40 acres NW 1/4 of SE 1/4 of Sec. 15 T5N R17W.

Very truly yours,

HAROLD J. OSTLEY
COUNTY TAX COLLECTOR

L. E. Skinner
Head Clerk
Tax Deeded Lands Section"

Then, the county in said brief on page 19 said:

> "Appellee would point out that the *only* misinformation contained in that letter [above tax collector letter of January 10, 1962] *is the legal description* contained therein." (Emphasis supplied)

The legal description in the letter was so different that to determine it was *"the property"* was *impossible*.

The misinformation that prevented redemption of the property was shown by petitioner's affidavit to his motion for Judgment on the Pleadings in the District Court, setting forth verbal misstatements of the respondent's officers which petitioner relied on to his detriment.

Compounding the erroneous information, plaintiff below contended, was the fact that there were no notices as provided by §§ 3358, 3799, California Revenue Taxation Code, of any proposed sales of the property; also, he pointed to the facts: that one of the county's employees had written a letter to him seeking to purchase the property and that this employee was in the particular operational branch which processed tax delinquent property. Moreover, that Exhibit B (Cl. Tr. 112) to said motion was a document showing the property owner's (petitioner) correct address was known and used by the county. This document was a receipt for partial payment of delinquent taxes where the situation was identical in that the property was encumbered with approximately the same number of years' back delinquent taxes but was redeemed.

Further stressed was the fact that in the foregoing instance redemption occurred *after* notice.

The county's position for not mailing any notice is that petitioner's name and address was not inscribed on the assessment rolls because there was no statement of property ownership furnished the assessor. In opposition to this excuse letters were submitted from respondent's neighboring counties all saying that such statement to the assessor was not required particularly when the *real* property was unimproved.

Most strongly urged was that the tax redemption department had said address was available to it, consequently, its failure to send the notice was a violation of trust since there was dependence on receiving notice as promised.

It was also admitted that redemption of properties many years more delinquent than property at bar was routinely approved. In other words, that it had been the mode to allow property to be encumbered with delinquent taxes as a lien suffer the interest penalty and redeem before sale, after notice.

In said affidavit, petitioner averred he was promised that he would receive notice prior to any sale of the property and that he had contacted the tax sales department at the time of holding the much publicized *annual public auction to third parties* of such delinquent tax properties. Consequently, he was further misled by the private, surreptitious confiscation.

Said affidavit avers the property is worth over sixty times the amount of the taxes due.

REASONS FOR GRANTING THE WRIT

The Court of Appeals remanded because of the "constitutional question" but the record shows it was never reached in the District Court, therefore, it is not reflected in the instant decision under review. Subsequent to the summary judgment in favor of the county, there have been important decisions of the California Review Courts holding to the proposition that such Statute of Limitations are not operative when, as here, there are circumstances creating estoppel such as misinformation mixed with or failure to give notice. These equitable relief cases follow the decisions of the high Federal Courts with "due process" being the controlling or cementing factor.

The cases are legend that in Summary Judgment Proceedings the one opposing the motion is deemed to have

his representations, or allegations of the complaint treated as facts. Moreover, in this case, the complaint was not answered.

The county has pleaded that it must be upheld in this matter; otherwise tax titles would be jeopardized. It is conceded that if a third party by public auction had acquired the property, this would be a valid argument. But not here because the county exchanged its legitimate due tax debt for property worth over sixty times the amount of the debt by neglect of duty and trust.

Recent decisions of the California Courts, as well as cases from the Florida Supreme Court and this Court, are discussed in point:

In *City of Bakersfield v. Miller*, 46 Cal. Rptr. 661, the court cited this Court:

> "As is said in *Powell v. State of Alabama*, 287 U.S. 45, 53 S. Ct. 55, 77 L. Ed. 158, an opportunity for hearing is one of the essential elements of 'due process'."

The court in *Bakersfield* approvingly quoted from another pertinent case on the question of forfeiture:

> "Neither the *Legislature* nor the *Courts* can dispense with the *Constitutional requirement* of a *Notice* and hearing." (Emphasis supplied)

Finally, at page 671, in *Bakersfield*, the court made its ultimate point appropriate here stating in effect that an investment could not be lost to forfeiture . . ."SO AS VIRTUALLY TO ROB THE OWNERS OF THEIR PROPERTY."

In *Hoffman v. City of Redbluff*, 47 Cal. Rptr. 553, at page 557, the *issue* of the Statute of Limitations was made clear against Respondent as follows:

> "[U]nder the holding in *Chase v. Trout* (1905), 145 Cal. 350, 80 P. 81, reiterated in many subsequent cases (see e.g., *In re Redevelopment Plan for Bunker Hill* (1964) 61 Cal. 2d 21, 44, 37 Cal. Rptr. 74,

389 P.2d 538; *Miller v. McKenna* (1944), 23 Cal. 2d 774, 781-782, 147 P.2d 531 (six further citations omitted). . . . *A curative statute may validate all defects in proceedings except those which have resulted in violation of constitutional rights.*" (Emphasis supplied)

Mulkey v. Reitman, 50 Cal. Rptr. 881, at page 884, has the following language, confirming the supremacy of the Federal Constitution as relied upon by Petitioner:

"The supremacy clause of the United States Constitution nevertheless compels that section 26, *like any other state law* conform to Federal Constitutional Standards before it may be enforced against persons who are entitled to protection under that Constitution. (See *Lucas v. Forty-Fourth Gen. Assembly of State of Colorado*, 377 U.S. 731, 736, 737, 34 S. Ct. 1459, 12 L. Ed. 2d 532.)"

When the recent pertinent state cases cited are applied to the circumstances herein it would seem that the weight of the state case law swings to the side of Petitioner.

Furthermore, since the case was remanded because of a constitutional question, Federal law should have been applied to fill in the interstices. The Fifth Circuit Court of Appeals in *McKenna v. Wallace*, 344 F.2d 432 (1965), held accordingly, as shown by headnote three hereby quoted:

"Law applied in diversity cases should be keyed to nature of issue before court, and if non-federal, state substantive law should be applied, but if federal matter is before court, federal law *should* be applied, 28 U.S.C.A. Sec. 1652." (Emphasis supplied)

By failure to equate or give *any* consideration to Federal Case Law, specifically on due process and equitable estoppel, the District Court was in plain error. Such a controlling case ignored below is *Schroeder v. City of New York*, 83 S. Ct. 279. In the *Schroeder* case, the City of New York contended that the property owner's action was barred by a statute providing a *three-year limitation*

period.[2] The property owner contended that she had not been given adequate notice and that such was a deprivation of due process. The city had caused notice to be published according to statute. The trial court granted the city's motion for judgment on the pleadings. This court reversed holding that the newspaper publications and posted notices *"did not measure up to the quality of notice which the Due Process Clause of the Fourteenth Amendment required."* The Court quoted favorably from the earlier case of *Mullane v. Central Hanover Tr. Co.*, 339 U.S. 306, 314, 20 S. Ct. 410:

> "'An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'"

This Court in the *Schroeder* case went on to say:

> "The general rule that emerges . . . is that notice by publication is not enough with respect to a person whose name and address are *known or very easily ascertainable* and whose legally protected interests are directly affected by the proceedings in question." At 83 S. Ct. p. 282 (Emphasis supplied)

This Court is further cited, in the premises, as authority for the establishment of a constructive trust in favor of Petitioner by the following venerable holding:

> "Whenever the circumstances of a transaction are such that the person who takes the legal estate in property cannot also enjoy the beneficial interest without necessarily *violating* some established

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[2] It is reiterated that one *year* limitations on actions is unreasonable in these circumstances. This short period was clearly intended *only* to protect third parties in interest. Respondent admits there was a mistake, therefore, the three year limitation on actions should control as provided by subdivision 4 of Sec. 338 of the Civil Procedure Code of the State of California. The county has remained silent as to this contention.

> *principle of equity*, the Court will immediately raise a *constructive trust* and fasten it upon the conscience of the legal owner, so as to convert him into a trustee for the parties, who in equity, are entitled to the beneficial enjoyment." *Chapman v. Douglas County*, 107 U.S. 348 2 S. Ct. 62, 27 L. Ed. 378. (Emphasis supplied)

Respondent's position is one in which it owes a real duty to the public amounting to a public trust to follow Constitutional processes. The principle of equity has been violated, Petitioner trusts inadvertently. This Respondent cannot deny nor has it shown any response to Petitioner's question in equity: why, in the circumstances, should it refuse the acceptance of the tax debt offered to be paid? Surely this would be classic equity in its purest crystallization because there would be no loss to the county, it merely would be prevented from unconscionable unconstitutional confiscation.[3]

In *Cook v. Katiba*, 190 So. 2d 309 (Fla. 1966), at page 312, the Supreme Court of Florida held:

> "Equitable estoppel as applied to land titles is a different thing. It depends on the conduct of the parties for its efficacy. It is not concerned with the language of the instrument and may actually *deny the legal effect of the deed.* In *Florida Land Investment Co. v. Williams*, 1928, 98 Fla. 1258, 116 So. 642, 643, this court said:
>
> > 'An equitable estoppel, as affecting land titles, is a doctrine by which a party is *prevented* from setting up his legal title because he has through his *acts, words,* or *silence* led another to take a *position* in which the assertion of the legal title would be *contrary to equity* and good *conscience*'." (Emphasis supplied)

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[3] "The primary purpose of government is to protect the people." Respondent's legal counsel speaking, 11/22/66, on ordinance to keep young people out of Sunset Strip, Hollywood, California.

In *Citizens Suburban Co. v. Rosemont Development Co.*, 53 Cal. Rptr. 551 (Sept. 1966), the California Appellate Court at page 560 said:

> "It is enough that a party may have been induced to refrain from taking steps to retrieve his position and to avoid loss. (*Banner v. Industrial Acc. Comm.*, 26 Cal. 2d 346, 349, 350, 159 P.2d 24.)"

The court further observed:

> "Good conscience required Price to disclose the facts. An *estoppel arises* from silence where there is a duty to disclose; where the party has an opportunity to disclose and knowing that the *circumstances* require him to disclose, remains silent. (People v. Ocean Shore Railroad, 32 Cal. 2d 406, 421-422, 196 P.2d 570, 6 A.L.R.2d 1179; 18 Cal. Jur. 2d Estoppel 8, pp. 408-409.)"(Emphasis supl'd)

As has been outlined in the Statement of the Case the respondent must admit the Petitioner was denied knowledge of the true facts by silence in respect to the property in that a long period of time ensued during which there was correspondence of over a dozen letters but finally only after the prodding of the correspondence was it disclosed that his property was involved. It should seem clear that the controlling fact confirming the estoppel is demonstrated and proven by the again quoted words of the respondent as the Appellee in its brief:

> "Appellee would point out that the *only* misinformation contained in that letter *is the legal description* contained therein." (Emphasis supplied)

In *Glus v. Brooklyn Eastern District Terminal*, 79 S. Ct. 760, at page 762, this Court said:

> "To decide the case we need look no further than the maxim that no man may take advantage of his own wrong. Deeply rooted in our jurisprudence this principle has been applied in many diverse classes of cases by both law and equity courts and has frequently been employed to *bar* INEQUITABLE RELIANCE on *Statutes of Limitations*. In *Schroeder v. Young*, 161 U.S. 334, 16 S. Ct. 512, 40 L. Ed. 721, this Court allowed a debtor to redeem property sold

to satisfy a judgment after the statutory time for redemption had expired although the statute granting the right to redeem also limited that right as to time. The Court held that the purchasers could not rely on the limitation because one of them had told the debtor 'that he would not be pushed, that the statutory time to redeem would not be insisted upon; [the debtor] believed and relied upon such assurance.' The Court pointed out that in 'such circumstances the courts have held with great unanimity that the purchaser is estopped to insist upon the statutory period, notwithstanding *the assurances* were *not in writing*, and were made without consideration, upon the ground that the debtor was lulled into a false security.' 161 U.S. at page 344, 16 S. Ct. at page 516.

"As Mr. Justice Miller expressed it in *Insurance Co. v. Wilkinson*, 13 Wall. 222, 233, 20 L. Ed. 617. The principle is that where one party has by his representations or his conduct induced the other party to a transaction to give him an advantage which it would be against equity and good conscience for him to assert, he would not in a court of justice be permitted to avail himself of that advantage. And although the cases to which this principle is to be applied are not as well defined as could *be* wished, the *general doctrine* is well understood and *is applied* by courts of law as well as equity *where* the *technical advantage* thus obtained is set up and relied on to defeat the ends of justice."

CONCLUSION

For the reasons stated herein the county should accept the tax payment and relinquish any claims to the property.

Respectfully submitted,

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APPENDIX A

[R. 157-158]

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

D. J. Miller,
Appellant,
vs.
County of Los Angeles, a Political Subdivision of the State of California,
Appellee.
No. 20,436

[July 21, 1966]

On Appeal from the United States District Court for the Southern District of California, Central Division.

Before: JERTBERG and ELY, Circuit Judges, and JAMESON, District Judge.

PER CURIAM:

Appellant, plaintiff in the District Court, and a citizen and resident of the State of Nevada, appeals from a summary judgment entered in favor of appellee, adjudging and decreeing that the appellee is the owner of certain described real property located in the County of Los Angeles, State of California, and that the appellant has no right, title, interest, or estate in and to the same.

The action was instituted by appellant on December 31, 1963, by the filing of a complaint which was superseded by an amended complaint filed on January 27, 1964. The amended complaint is entitled "Complaint for Declaratory Relief and To Impress Constructive Trust on Real Property for Damages and for Unjust Enrichment." In the amended complaint plaintiff claims to be the owner of the

property in question and alleges that appellee acquired title to said real property through alleged surreptitious and unlawful tax sales proceedings, and seeks to have it declared that title to said property is held in trust by appellee, and that title to said property be vested in appellant on payment of all delinquent taxes and penalties accruing prior to appellant's demand upon appellee for reconveyance of title to appellant.

The District Court dismissed the action without leave to amend. On appeal to this court, by appellant, from such order of dismissal, we construed the order dismissing the action to be based upon lack of any jurisdiction in the District Court to entertain the action, and held that the allegations of the amended complaint were sufficient to invoke the jurisdiction of the District Court under 28 U.S.C. § 1331.[1] We further held that the allegations of the amended complaint were not sufficient to invoke the diversity jurisdiction of the District Court under 28 U.S.C. § 1332. In reversing and remanding the cause to the District Court we stated that we were not in any way passing upon the merits of appellant's claimed grievance. *Miller v. County of Los Angeles, a Political Subdivision of the State of California*, 341 F.2d 964 (1965).

On remand appellee moved for summary judgment on the grounds that appellant's cause of action is barred by the provisions of Sections 175, 3521, and 3809 of the Revenue and Taxation Code of the State of California. The motion was heard on the affidavits, and thereafter the District Court made findings of fact, conclusions of law, and entered judgment in favor of appellee.

---

[1] "§ 1331. Federal question; amount in controversy; costs

"(a) The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States."

From our examination of the record, we are satisfied that there existed in the cause no genuine issue as to a material fact, and that the District Court, under applicable decisions of the reviewing courts of the State of California, properly caused to be entered the summary judgment appealed from.

Affirmed.

APPENDIX B

[R. 160]

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Excerpt from Proceedings of Wednesday September 21, 1966.

Before: JERTBERG and ELY, Circuit Judges and JAMESON, District Judge.

ORDER DENYING PETITION FOR REHEARING

On consideration thereof, and by direction of the Court, IT IS ORDERED that the petition of appellant filed September 12, 1966, and within time allowed therefor by rule of court, and a valid extension thereof, for a rehearing of above cause be, and hereby is denied.

APPENDIX C

STATUTES INVOLVED

Revenue and Taxation Code of the State of California:

Sec. 175. All deeds heretofore and hereafter issued to the State of California or to any taxing agency, including taxing agencies which have their own system for the levying and collection of taxes, by reason of delinquency of property taxes or assessments levied by any taxing agency or revenue district, shall be conclusively presumed to be valid unless held to be invalid in an appropriate proceeding in a court of competent jurisdiction to determine the validity of said deed commenced within one year after the execution of said deed, or within one year after the effective date of this section, whichever be later. Such proceedings may be prosecuted within the time limits above specified in the manner and subject to the provisions of Sections 3618 to 3636 of this code.

Sec. 3358. After the first publication of the notice of the deed to the State of tax-sold property and not less than 21 nor more than 35 days before the date of deeding, when tax-sold property is to be deeded, the tax collector shall send by registered mail to the last assessee of the tax-sold property at his last known address either a copy of the publication or a printed notice of deeding the property to the State. To ascertain the address of the last assessee of the tax-sold property an examination shall be made of the assessment of this property on the rolls beginning with the year of delinquency to and including that of the last equalized roll.

Sec. 3521. A proceeding based on an alleged invalidity or irregularity of any deed to the State for taxes or of any proceedings leading up to the deed can only be commenced within one year after the date of recording of the deed to the State in the county recorder's office or within one year after June 1, 1941, whichever is later.

Sec. 3799. The tax collector shall mail a copy of the notice not less than 21 nor more than 28 days prior to the effective date of the agreement, by registered mail to the last assessee of each portion of the property at his last known address.

To ascertain the address of the last assessee of the tax-deeded property an examination shall be made of the assessment of this property on the rolls beginning with the year of delinquency to and including that of the last equalized roll.

It is not necessary to mail a copy of the notice to any party who files with the tax collector a written acknowledgment of receipt of a copy of the notice or a waiver of the notice.

Sec. 3809. A proceeding based on alleged invalidity or irregularity of any agreement or deed executed under this article can only be commenced within one year after the execution of the instrument.

Civil Procedure Code

Sec. 338. [Within three years.] Within three years:

* * *

4. An action for relief on the ground of fraud or mistake. The cause of action in such case not to be deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the fraud or mistake.

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COUNTY OF LOS ANGELES, a political subdivsion of the State of California,
Respondent.

RESPONDENT'S ANSWER TO PETITION FOR WRIT OF CERTIORARI

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TOPICAL INDEX

	Page
Preliminary Statement	1
Statement of the Case	2
Issue	6
Summary of Argument	7
I. Summary Judgment Was Proper In the Instant Action	8
II. California Statutory Mode for the Enforcement of Delinquent Tax Liens	9
III. Petitioner's Cause of Action Is Barred By Sections 175, 3521 and 3809 of the Revenue And Taxation Code of the State of California	12
A. Sections 175, 3521 and 3809 Are Statutes of Limitation	12
B. Petitioner's Action Was Not Timely Filed	18
IV. Respondent Is Not Estopped from Asserting the Bar of the Statute of Limitations	19
V. Petitioner's Failure to File A Property Statement Excused the Tax Collector From Sending Him A Mail Notice	24
Conclusion	28

TABLE OF CASES AND AUTHORITIES CITED

Cases

Page

Albatross Shipping Corp. v. Stewart (CA 5 1964) 326 Fed 2d 208 8
City of Bakersfield v. Miller (1965) 46 Cal. Rptr. 661 19
Citizens Suburban Co. v. Rosemont Development Co. (1966) 244 A.C.A. 745, 53 Cal. Rptr. 551 19
Cook v. Katiba (Fla. 1966) 190 So. 2d 309 19
Davault v. Essig, 80 Cal. App. 2d 970 14
Edwards v. City of Santa Paula, 138 Cal. App. 2d 375 16
Federated Income Properties, Inc. v. State of California, 82 Cal. App. 2d 893 15
Glus v. Brooklyn Eastern District Terminal, 79 Sup. Ct. 760 19
Hoffman v. City of Red Bluff (1965) 63 Cal. 2d 584, 47 Cal. Rptr. 553 19
Howard v. State of California (1963) 216 Cal. App. 2d 281 17
Penaat v. Terwilliger, 23 Cal. 2d 865 26
People v. Chamber, 37 Cal. 2d 552 16
Mercury-Herald Co. v. Moore, 22 Cal. 2d 269 15
Mulkey v. Reitman (1966) 64 Cal. 2d 529, 50 Cal. Rptr. 881 19
McCaslin v. Hamblen, 37 Cal. 2d 196 13
McKenna v. Wallace (1965), 344 Fed 2d 432 19
Scott v. Beck, 204 Cal. 78 26

Page

Sears v. County of Calaveras, 45 Cal. 2d 518 ..... 13, 16, 22
Schroeder v. City of New York, 83 Sup. Ct. 279 19
Tannhauser v. Adams, 31 Cal. 2d 169 16

Authorities

Page

California Revenue and Taxation Code,
§ 441 6
§§ 441 through 447 ..... 5, 7
§ 3358 25
§ 3436 3
§ 3511 3
§ 3799 25

California Revenue and Taxation Code,
Section 175 ..... 7, 8, 12, 14
Section 441 24
Section 3521 ..... 7, 8, 12, 14, 15
Section 3696.5 21
Sections 3691 through 3731 21
Section 3706 21
Section 3791 17
Section 3809 ..... 7, 8, 12, 16, 23

Code of Civil Procedure, Sections 351 to 358 13

28 U.S.C. § 1331 3

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RESPONDENT'S ANSWER TO PETITION FOR WRIT OF CERTIORARI

PRELIMINARY STATEMENT

Petitioner D. J. Miller seeks by this proceeding a Writ of Certiorari to review a judgment decreeing that respondent County of Los Angeles is the owner of certain described real property located in the County of Los Angeles, and that the petitioner has no right, title, interest or estate in and to the same. The judgment was affirmed by the U.S. Court of Appeals for the Ninth Circuit on July 21, 1966.

In view of the excellent opinion of the Circuit Court and the fact that there is no federal question involved herein, we respectfully submit that the Petition be denied.

STATEMENT OF THE CASE

Petitioner commenced this action on December 31, 1963 and filed an amended complaint on January 27, 1964. The amended complaint is designated "Complaint for Declaratory Relief and to Impress Constructive Trust on Real Property For Damages and For Unjust Enrichment" (Cl. Tr. 12-20). In the amended complaint, petitioner prays for a declaration that he is the owner of the real property therein described, and alleges that the respondent County acquired title to said property through alleged surreptitious tax sale proceedings and further that the real property had been deeded to the State of California on July 1, 1959, and deeded to respondent on October 19, 1960 (Cl. Tr. 15). The thrust of petitioner's action is thus directed to the validity of the deeds to the State of California and the deed to respondent County of Los Angeles.

On April 20, 1964, the action was dismissed by the District Court. On appeal, the Court of Appeal for the Ninth Circuit reversed the judgment of dismissal on the ground that although petitioner's amended complaint failed to state a claim upon which relief could be granted under the diversity jurisdiction of the federal court, sufficient allegations were contained in the

amended complaint to invoke jurisdiction under 28 U.S.C. § 1331. In reversing the original judgment of dismissal, the Ninth Circuit stated that they were in no way passing upon the merits of petitioner's claimed grievance (*Miller v. County of Los Angeles* (1965) 341 Fed. 2d 964).

Upon remand, respondent County moved for summary judgment based upon affidavits which clearly showed that in truth and in fact no federal question was presented and that the cause was barred by the applicable California statutes of limitation (§§ 175, 3521 and 3809 of the Revenue and Taxation Code of the State of California). Leland E. Skinner, head clerk of the Tax Deeded Lands Section of the Los Angeles County Tax Collector's Office, averred *inter alia* that the taxes levied against the property in question became delinquent in 1953; that the property was sold to the State of California by operation of law pursuant to §3436 of the California Revenue and Taxation Code on June 30, 1954; that on July 1, 1959, the property was deeded to the State of California pursuant to § 3511 of the Revenue and Taxation Code and that on October 19, 1960, the property was deeded to respondent County of Los Angeles (Cl. Tr. 70-72). Attached to Mr. Skinner's affidavit as Exhibits A, B and C were certified copies of the deeds from the Tax Collector to the State and the deed to respondent County (Cl. Tr. 73-75). These deeds were *prima facie* evidence that:

(a) The property was assessed as required by law.

(b) The property was equalized as required by law.

(c) The taxes were levied in accordance with law.

(d) The taxes were not paid.

(e) At a proper time and place the property was sold as prescribed by law.

(f) The property was not redeemed.

(g) The person who executed the deed was the proper officer.

(h) That the amount for which the property was sold was legally a lien on the real property.

(§3517, Revenue and Taxation Code)

Likewise, these deeds conclusively establish the regularity of all other proceedings from the assessments of the Assessor to the execution of the deeds (§ 3518, Revenue and Taxation Code).

Affiant Skinner further averred that prior to the sale to the State and prior to the deeding of the property to the State and prior to the deeding of the property to respondent County, examination was made of the County tax rolls beginning with the year of delinquency (1953) to and including the last equalized roll to ascertain the address of the last assessee and that no address appeared on said roll (Cl. Tr. 72).*

*Both §§ 3358 and 3799 of the California Revenue and Taxation Code provide in relevant part that in order to ascertain the address of the last assessee of the tax-sold or tax-deeded property, the only examination that need be made is of the assessment of the property on the tax rolls beginning with the year of delinquency to and including that of the last equalized roll.

Affiant Skinner also averred that he had examined the records in the Los Angeles County Assessor's Office and that said examination disclosed that no property statement as is required by §§ 441 through 447 of the Revenue and Taxation Code was filed by petitioner between 1952 and 1960 and as a consequence, no address for petitioner appeared on the tax rolls for said years (Cl. Tr. 72).

In opposition to respondent's motion for summary judgment, petitioner filed points and authorities and an affidavit *which in no way controverted the facts set forth in the affidavit of affiant Skinner* (Cl. Tr. 94-114). Petitioner's affidavit, at most, alleged that he commenced a redemption payment plan in *1951* wherein the first payment (and it would appear the only payment) was made on November 13, 1951 (see exhibits A and A1, Cl. Tr. 110-111); that receipt for the first payment was mailed to petitioner in December, 1951 (Exhibit B, Cl. Tr. 112); that other mail from an unknown person had been forwarded to petitioner (Exhibit B1, Cl. Tr. 113) and that on January 10, 1962, in response to a letter from petitioner apparently dated December 16, 1961, he was advised by the Tax Collector that the property had been deeded to respondent County on October 19, 1960 (Exhibit C, Cl. Tr. 114).

On July 12, 1965, the District Court granted the County's motion for summary judgment (Cl. Tr. 124) and findings of fact, conclusions of law and judgment in favor of respondent County of Los Angeles were filed and entered on July 12, 1965, and July 13, 1965 (Cl. Tr. 116-121). Petitioner's motion for new trial or rehearing was denied August 16, 1965 (Cl. Tr. 149). The U.S. Court of Appeal for the Ninth Circuit affirmed the judgment in favor of respondent on July 21, 1966, and denied petitioner's motion for rehearing on September 21, 1966.

ISSUE

The question presented herein is not whether without notice to the property owner as prescribed by law, although his address was available, the County of Los Angeles may acquire property for tax delinquencies but rather, whether or not petitioner's cause of action is barred by the applicable California statues of limitation (Revenue and Taxation Code §§ 175, 3521 and 3809).

The fact of the matter is that petitioner's address was *not* known, was *not* available or readily ascertainable due to his own neglect in failing to file the property statement as required by § 441 of the California Revenue and Taxation Code and he now seeks to invoke the due process clause to provide relief from his own negligent conduct.

SUMMARY OF ARGUMENT

Sections 175, 3521 and 3809 of the Revenue and Taxation Code provide a one-year statute of limitations within which to attack the validity of tax deeds issued to the State of California or to a political subdivision thereof as a means of enforcing *ad valorem* property tax delinquencies. The deeds here in issue were executed on July 1, 1959 (State), and October 19, 1960 (County). Petitioner did not file the present action until December 31, 1963, some four years and five months subsequent to the deeding of the property to the State of California and three years and two months subsequent to the deeding of the property to respondent County and, therefore, his cause of action is barred by the aforementioned sections.

Petitioner cannot claim as error a lack of notice by mail since this error, if in fact it be one, was caused solely by his own neglect. Petitioner failed and neglected to file with the Assessor of Los Angeles County a property statement as is required by Sections 441 through 447 of the Revenue and Taxation Code and as a result, no address appeared on the tax rolls. Since no address appeared on the rolls, no notice by mail could be sent petitioner. Petitioner seeks to hold respondent liable for a problem created solely by petitioner's neglect.

I.

SUMMARY JUDGMENT WAS PROPER IN THE INSTANT ACTION

The purpose of summary judgment is to achieve a quick resolution of a dispute when there is no necessity for a trial on the facts. As was stated in *Albatross Shipping Corp v. Stewart* (CA 5 1964) 326 Fed 2d 208, at 211:

> "... The prime purpose of the summary judgment procedure is to secure the just, speedy and inexpensive determination of any action ..."

FRCP 56(c) provides in pertinent part:

> "... the judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law ..."

Respondent submits no question of fact is presented by the instant action and, therefore, the granting of the motion for summary judgment was proper. Petitioner in no way controverted the affidavit of Mr. Skinner, which was filed in support of respondent's motion. Petitioner did not deny that his property was tax delinquent; he did not deny that the deeds were executed on the dates mentioned; and he did not deny that he had failed to file the property statements required

by law. Respondent respectfully submits that since no question of fact was presented to the Court below, it was justified in ruling as a matter of law that petitioner's cause of action is barred by Sections 175, 3521 and 3809 of the Revenue and Taxation Code of the State of California.

II.

CALIFORNIA STATUTORY MODE FOR THE ENFORCEMENT OF DELINQUENT TAX LIENS.

Although perhaps redundant, respondent feels that a brief resumé of the applicable California law respecting tax delinquencies is appropriate to set the proper frame of reference herein.

California provides a complete and exhaustive statutory mode for the enforcement of and the collection of delinquent ad valorem property taxes. Every tax on real property is a lien against the real property assessed (Revenue and Taxation Code Sec. 2187)* which attaches annually as of noon on the first Monday in March preceeding the fiscal year for which the taxes are levied (Sec. 2192). The first half of the taxes are due November 1 and become delinquent December 10 (Secs. 2605 and 2617), and the second half of the taxes levied are due February 1 and become delinquent April 10 (Secs. 2606 and 2618). After the second half of taxes on real property is delinquent, the Tax Collector

*All references hereafter are to the California Revenue and Taxation Code unless otherwise stated.

is required to prepare a delinquent roll (Sec. 2624) and thereafter publish same (Sec. 3351), together with a notice that unless the total amount due is paid, the time and place at which the property will be sold to the State by operation of law (Sec. 3352). Not less than 21 nor more than 28 days after the publication of the delinquent list, the real property on which the taxes have not been paid is sold by operation of law to the State of California (Sec. 3436).

Five years after the property is sold to the State, the Tax Collector is required to execute a deed conveying the property to the State (Sec. 3511). Prior to such deeding, the Tax Collector is required to publish notice thereof (Secs. 3354 and 3355) and to forward a notice thereof by registered mail to the last known assessee. To ascertain the address of the last assessee, the Tax Collector is required to examine the assessment of the property on the rolls beginning with the year of delinquency to and including the last equalized roll (Sec. 3358).

Every person is required to file a written property statment under oath with the Assessor between noon on the first Monday in March and 5:00 p.m. on the last Monday in May annually (Sec. 441), setting forth all taxable property owned, claimed, possessed, controlled or managed by that person (Sec. 442). The property statement required by the Assessor shows the person's name, place of residence or place of business, and whether he is the owner of any taxable property (Sec. 543).

Subsequent to the deed to the State, the real property is either sold at public auction (Secs. 3691 - 3731) or by agreement conveyed to a county, city or other public agency (Secs. 3771 - 3814). The latter procedure was followed in the instant action.

Whenever land has been deeded to the State, a county may purchase the property by agreement (Secs. 3791.3 and 3775). The County Tax Collector is required to give notice of this agreement by publication and is required to mail a notice thereof by registered mail to the last known assessee (Secs. 3798 and 3799). To ascertain the address of the last known assessee, the Collector is required to examine the rolls beginning with the year of delinquency to and including the last equalized roll (Sec. 3799). Thereafter, the Tax Collector executes a deed of the property to the County which, except as against actual fraud, is conclusive evidence of compliance with requirements of the Code (Secs. 3804 and 3806).

The Revenue and Taxation Code further provides a one-year statute of limitations within which to attack the validity of the deed to the State (Secs. 175 and 3521), as well as a similar period to attack the validity of the deed from the State to the County (Secs. 175 and 3809).

III.

PETITIONER'S CAUSE OF ACTION IS BARRED BY SECTIONS 175, 3521 AND 3809 OF THE REVENUE AND TAXATION CODE OF THE STATE OF CALIFORNIA.

A. Sections 175, 3521 and 3809 Are Statutes of Limitation.

Section 175 of the Revenue and Taxation Code of the State of California provides:

> "Sec. 175. All deeds heretofore and hereafter issued to the State of California or to any taxing agency, including taxing agencies which have their own system for the levying and collection of taxes, by reason of delinquency of property taxes or assessments levied by any taxing agency or revenue district, shall be conclusively presumed to be valid unless held to be invalid in an appropriate proceeding in a court of competent jurisdiction to determine the validity of said deed commenced within one year after the execution of said deed, or within one year after the effective date of this section, whichever be later. Such proceedings may be prosecuted within the time limits above specified in the manner and subject to the provisions of Sections 3618 and 3636 of this code."

Section 3521 provides:

> "Sec. 3521. A proceeding based on an alleged invalidity or irregularity of any deed to the State for taxes or of any proceedings leading up to the

deed can only be commenced within one year after the date of recording of the deed to the State in the county recorder's office or within one year after June 1, 1941, whichever is later.

"Sections 351 to 358, inclusive, of the Code of Civil Procedure do not apply to the time within which a proceeding may be brought under the provisions of this section."

Section 3809 provides:

"Sec. 3809. A proceeding based on alleged invalidity or irregularity of any agreement or deed executed under this article can only be commenced within one year after the execution of the instrument."

In construing Section 175 the Supreme Court of California in *McCaslin v. Hamblin,* 37 Cal. 2d 196; 231 Pac. 2d 1, stated at page 198:

"It may not be questioned that the section is a Statute of Limitations as distinguished from a curative act, and that the time factor is reasonable so as to bar these actions commenced almost two years after the effective date (citing cases), unless it may be said that the plaintiffs were owners in possession as against whom the statute would not apply."

In Sears v. County of Calaveras, 45 Cal. 2d 518; 289 Pac. 2d 336, the plaintiff brought an action in 1948 to declare invalid a tax deed issued in 1943. Defendants demurred on the ground that plaintiff's action was

barred by the the limitations contained in Sections 175, and 3521 of the Revenue and Taxation Code. Plaintiff contended that those sections do not apply to an owner in exclusive and undisputed possession. In rejecting this argument the Court stated at page 521:

> "The contention that a statute limiting the time for the commencement of an action to set aside a deed to the state for delinquent taxes does not apply to an owner in exclusive and undisputed possession of the property taxes, is largely based on a rule stated to be that a general statute of limitations does not run against such an owner to remove a cloud upon his title. It may be assumed that such is the general rule (citing cases).
>
> "But the general rule does not apply as against a special statute of limitation foreclosing the commencement of an action to set aside a deed to the state for delinquent taxes beyond one year from and after the recording of the deed to the state."

The Court further stated at page 520:

> "Both of these sections are statutes of limitations (citing cases)."

In *Davault v. Essig,* 80 Cal. App. 2d 970; 183 Pac. 2d 38; Cert. denied 68 Supreme Court 660; 333 U.S. 843; 92 L. Ed. 112 the Court stated at pages 972 and 973:

> "The appellants argue that Section 3521 does not apply in such a case as this where the attack

is made on jurisdiction or constitutional grounds raising the point that original proceedings which led to the sale to the State were entirely invalid This contention is without merit since Section 3521 is not a curative act but is a Statute of Limitation and repose, providing a reasonable period of limitation (citing cases). The principles applied in *Mercury-Herald Co. v. Moore,* 22 Cal. 2d 269 (138 Pac. 2d 673; 147 A.L.R. 1111) are applicable here. If the shortening of the period of redemption, where a reasonable time is allowed in which to act, is not violative of constitutional rights it would seem to be even more clear under principles which are frequently applied that a right exists to fix some reasonable limitation upon the time within which a constitutional right may be exercised, by which a limitation is placed on the time within which an action may be commenced to attack the validity of a deed to the State, which deed is given after the five-year period of absolute right of redemption has expired.".

In *Federated Income Properties, Inc. v. State of California,* 82 Cal. App. 2d 893; 187 Pac. 2d 460, property had been sold to the State of California for nonpayment of taxes. After acquiring title, the State sold the property to the City of South Pasadena pursuant to an agreement authorized by Chapter 8 of Part 6 of Division 1 of the Revenue and Taxation Code (Sections 3791 et seq.). Plaintiff two years later brought an action to quiet title to the property and the City of South Pasadena, among other defenses, claimed that

the action was barred by Section 3809 of the Revenue and Taxation Code. In affirming the judgment for the defendant, the Court stated at page 901:

> "3. *The Statute of Limitations.* Since the sale to the City of South Pasadena was valid and since this action was not commenced within one year after the execution of the deed from the State to the City, it is barred by Section 3809 of the Revenue and Taxation Code."

Other cases holding Sections 175, 3521, and 3809 to be Statutes of Limitation are: *People v. Chambers,* 37 Cal. 2d 552; 233 Pac. 557; *Edwards v. City of Santa Paula,* 138 Cal. App. 2d 375; 292 Pac. 2d 31; and *Tannhauser v. Adams,* 31 Cal. 2d 169; 187 Pac. 2d 176.

Statutes and code sections should be given a reasonable interpretation according to the apparent or evident intention of the legislature (*Dickey v. Raisin Proration Zone,* 24 Cal. 2d 796; 151 Pac. 2d 505; *Alameda Co. v. Kuchel,* 32 Cal. 2d 193; 195 Pac. 2d 17) and it seems quite apparent from a study of Revenue and Taxation Code that the legislature intended some finality to tax deeds and the proceedings leading up thereto (see Sections 175, 176, 177, 3521, 3522, 3711, 3809 and 3810). As was stated in *Sears v. Calaveras, supra,* 45 Cal. 2d 518 at page 521, "If the contention of the plaintiffs should prevail, the finality of tax proceedings will be thrown into confusion. The validity of tax deeds as against an owner of real property

would be placed in suspension for an indefinite period and until at his election he chose to attack it. Without limit of time he could defend against it."

In Howard v. State of California (1963), 216 Cal. App. 2d 281; 30 Cal. Rptr. 708 (Hearing denied by California Supreme Court), a case identical with the one at bar, plaintiffs brought an action to quiet title to certain real property which had been deeded to the County pursuant to Revenue and Taxation Code Sections 3791 et seq. Plaintiffs contended therein that failure to send notices by registered mail voided the tax proceedings and subsequent tax deeds. The Court rejected this argument stating at page 285:

> "If timely objection had been made to any purported irregularity in the tax proceedings leading to the county's eventual tax title the court might have entertained such objection, but continued dereliction by plaintiffs has inexplorably foreclosed them from relief. There must be a finality to tax enforcement procedures. There is in tax cases, the unquestioned tax debt to justify the taking and in addition, the taxpayer is permitted at least six years within which to redeem or attack any supposed irregularity in the tax proceedings. Such period is a most reasonable allowance for the cure of the laxity of tax delinquency."

B. Petitioner's Action was not Timely Filed.

1. Petitioner is barred from contesting the validity of the deeds from the Tax Collector to the State.

The affidavit of Leland E. Skinner filed in conjunction with respondent's motion for summary judgment set forth the following facts with respect to the real property here involved:

1.	Taxes Levied for Year	1953
2.	Taxes Paid	No
3.	Sold to the State	June 30, 1954
4.	Deeds to State	July 1, 1959
5.	Deeds Recorded	July 30, 1959
6.	Deed to County	October 19, 1960
7.	Deed Recorded	November 21, 1960.

Petitioner had up and until August 1, 1960, to contest the validity of the deeds to the State or the proceedings leading up to said deeds (Sec. 3521).* Petitioner did not file his action until December 31, 1963, some three years and five months *after* the expiration of the statutory period and, therefore, any action contesting the validity of said deeds is barred.

2. Petitioner is barred from contesting the validity of the deed to respondent County.

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*Section 175 provides a one-year statute of limitations from the date of *execution* of the deed, while Section 3521 provides a one-year statute of limitations from the date of *recording* said deed.

Petitioner had until October 20, 1961 to contest the validity of respondent's deed. Petitioner did not file his action until more than two years and one month after the expiration of this period and, therefore, his action with respect to this deed is also barred.

IV.

RESPONDENT IS NOT ESTOPPED FROM ASSERTING THE BAR OF THE STATUTE OF LIMITATIONS.

Petitioner cites *City of Bakersfield v. Miller* (1965), 46 Cal. Rptr. 661; *Hoffman v. City of Red Bluff* (1965), 63 Cal. 2d 584, 47 Cal. Rptr. 553; *Mulkey v. Reitman* (1966), 64 Cal. 2d 529, 50 Cal. Rptr. 881; *McKenna v. Wallace* (1965), 344 Fed. 2d 432; *Schroeder v. City of New York,* 83 Sup. Ct. 279; *Cook v. Katiba* (Fla. 1966), 190 So. 2d 309; *Citizens Suburban Co. v. Rosemont Development Co.* (1966), 244 A.C.A. 745, 53 Cal. Rptr. 551; and *Glus v. Brooklyn Eastern District Terminal,* 79 Sup. Ct. 760, for the proposition that respondent should be estopped from asserting the bar of the staute of limitations (Petition, pages 7-12). These cases can be of no help to petitioner. With respect to the first four cases, respondent has no quarrel with the abstract propositions of law quoted therefrom in the petition. They are sound principles of law but they simply have no application to the case at bar. In the *Schroeder* case, *supra,* the court held that in the sale of tax delinquent property, notice by publication is insufficient in those situations where a per-

son's name and address are known or very easily ascertainable. There can be no question in this case that petitioner's address was *not* known, was *not* available or for that matter easily ascertainable. But for petitioner's failure to file a property statement, an address would have appeared on the assessment roll and a mail notice of the Tax Collector's actions would have been sent him. Petitioner cannot now seek redress to a problem created by his own neglect and failure to comply with the law.

In each of the latter three cases there was an affirmative misrepresentation through acts, words, or silence which prevented the plaintiff from taking steps to retrieve his position or to avoid loss. The courts invoked the well-known doctrine of equitable estoppel and held that defendants were estopped from relying on certain alleged facts because of their affirmative conduct.

No such circumstances exist in the instant case since respondent took no affirmative action upon which petitioner relied to his detriment. Apparently, it is petitioner's position that a letter written January 10, 1962 (Exhibit C, Cl. Tr. 114) in response to an inquiry by petitioner dated December 19, 1961, affirmatively misrepresented the facts to him and caused him to delay filing his action. Whether that letter contained any item of misinformation is totally immaterial and irrelevant herein because at the time of petitioner's inquiry on December 19, 1961, the statutory period within which he could contest the validity of the deed to re-

spondent had already expired. Inconceivably, petitioner now argues that information given him *after* the statutory period had expired misled him.

The only other averments upon which petitioner apparently relies are those found in the affidavit filed by petitioner in support of his motion for judgment on the pleadings (Cl. Tr. 94 and 95) wherein he states that he was "aware that defendant held a public auction of such tax delinquent property *only* in the first few months of each year at which time in the years 1960 and 1961 affiant telephoned the officers of defendant and was informed that said real property was not to be sold in said sales and was assured that he could redeem the property prior to any such sale at public auction." At most, petitioner's affidavit shows that in 1960 and 1961, someone informed him that his property was not among those listed for sale at public auction pursuant to Sections 3691 through 3731 and that should it be put up for sale, petitioner had the legal right to redeem the property prior to such sale. These statements were obviously true for the property was not sold at public auction and Sections 3696.5 and 3706 provide a right of redemption prior to the sale.

The doctrine of estoppel is not favored in the law particularly where it is sought to be asserted against a public agency. Four things must be presented in order to invoke the doctrine of estoppel: (1) the party to be estopped must know all the facts; (2) he must intend that his conduct shall be acted on or must so

act that the party asserting the estoppel has a right to believe it is so intended; (3) the latter must be ignorant of the facts and (4) he must rely on the former's conduct to his injury (*Skidmore v. County of Solano,* 154, Cal. App. 2d 449, 453).

None of the latter three elements referred to above are presented in the instant action unless it can be said that reliance upon a correct statement of the law will give rise to an estoppel.

Furthermore, respondent submits that public policy requires the application of the statute of limitation in the instant action. Should this Court hold that mere averments that the taxpayer telephoned some unnamed officers of the County who advised the taxpayer that his property was not to be sold in certain years and could be redeemed by him prior to sale, are sufficient to place in issue the validity of tax deeds in an action filed more than three years after their execution, the validity of all tax deeds heretofore issued would be jeopardized. This result is exactly that which concerned the California Supreme Court in *Sears v. Calaveras, supra,* 45 Cal. 2d 518. There must be some finality to tax enforcement procedures and respondent submits the six-year period within which the taxpayer may redeem or attack the proceedings is a more than reasonable time within which to cure tax delinquencies.

Petitioner was advised on January 10, 1962, that his property had been deeded to respondent on October

19, 1960, and he did not file the present action until almost two years after acquiring this knowledge. Assuming solely for the purpose of argument that respondent should be estopped from asserting the statute of limitations because petitioner was misled to his detriment, he was not so misled subsequent to January 10, 1962, and any misrepresentations, if any there were, were cured as of that date. If respondent should be estopped, it should only be so for a period not to exceed one year subsequent to the time petitioner was advised of the disposition of his property; i.e., up and until January 10, 1963. This one-year period would give petitioner the same period of time allowed him by Section 3809 to attack the validity of the deed to respondent and yet, petitioner slept on his rights until December 31, 1963, almost two years after he was advised by the Tax Collector that his property had been deeded to respondent.

V.

PETITIONER'S FAILURE TO FILE A PROPERTY STATEMENT EXCUSED THE TAX COLLECTOR FROM SENDING HIM A MAIL NOTICE.

Section 441 of the Revenue and Taxation Code provides:

> "Sec. 451. Every person shall file a written property statement, under oath, with the assessor between noon on the first Monday in March and 5 p.m. on the last Monday in May, annually, and within such time as the assessor may appoint. At any time, as required by the assessor for assessment purposes, every person shall furnish information or records for examination."

Section 442 provides in part:

> "Sec. 442. The property statement shall show all taxable property owned, claimed, possessed, controlled, or managed by:
>
> (a) The person making the statement. . . ."

It is from this property statement that the local tax rolls are prepared and unless such a statement is filed, no address will appear on said rolls. Without such address, no notice of the sale or deeding of property for tax delinquency can be sent by mail to the last assessee. In the instant action, at no time pertinent to inquiry did petitioner ever file the required property statment with the Assessor of Los Angeles County and,

therefore, no address appears on the tax rolls regarding the last assessee of the property.

Revenue and Taxation Code §3358 provides:

"After the first publication of the notice of the deed to the State of tax-sold property and not less than 21 nor more than 35 days before the date of deeding, when tax-sold property is to be deeded, the tax collector shall send by registered mail to the last assessee of the tax-sold property at his last known address either a copy of the publication or a printed notice of deeding the property to the State. *To ascertain the address of the last assessee of the tax-sold property an examination shall be made of the assessment of this property on the rolls beginning with the year of delinquency to and including that of the last equalized roll.*" (Emphasis added.)

Revenue and Taxation Code §3799 provides:

"The tax collector shall mail a copy of the notice not less than 21 nor more than 28 days prior to the effective date of the agreement, by registered mail to the last assessee of each portion of the property at his last known address.

"To ascertain the address of the last assessee of the tax-deeded property an examination shall be made of the assessment of this property on the rolls beginning with the year of delinquency to and including that of the last equalized roll.

"It is not necessary to mail a copy of the notice to any party who files with the tax collector a

written acknowledgment of receipt of a copy of the notice or a waiver of the notice."
(Emphasis added.)

These code sections were fully complied with by the Tax Collector of Los Angeles County. Because petitioner did not file a required property statement, no address appeared on the tax rolls and the Tax Collector was unable to send the notice required by mail.

With respect to the notice required by the code, the California Supreme Court has stated:

> "The inquiry of the tax collector in endeavoring to ascertain the post office address of the delinquent property owners need not extend beyond an examination of the assessment roll during the period mentioned. All the tax collector has to do as to mailing notice is to look at the assessment rolls and ascertain to whom the property about to be sold was last assessed, and whether the address of the party appears thereon. If it does, he must mail a notice. *If it does not, no mailing of notice is required.* He is not bound to look beyond or outside the assessment roll to ascertain the address of a party when the assessment roll does not furnish it . . ." (*Jacoby v. Wolff,* 198 Cal. 667 at 681; 247 Pac. 195) (Emphasis added)

See also *Scott v. Beck,* 204 Cal. 78; 266 Pac. 951, and *Penaat v. Terwilliger,* 23 Cal. 2d 865; 147 Pac. 2d 552 wherein tax sale proceedings were held valid though no notice was sent to the last assessee. In each

case, the name of the assessee appeared on the rolls, but no address appeared thereon and the court held the tax collector was excused from complying with the sections requiring notice by mail.

The Skinner affidavit filed in support of respondent's motion for summary judgment (Cl. Tr. 70-72) affirmatively shows that prior to any of the actions taken herein, examination was made of the tax rolls commencing with the year of delinquency (1953) to and including the last equalized roll and no address appeared thereon. These facts were not controverted by petitioner.

The Tax Collector did all that was required of him under the law. But for petitioner's failure to file a property statement, an address would have appeared on the assessment roll and a mail notice of the Tax Collector's actions could have been sent him. Respondent submits petitioner cannot now base his claim to the property on a problem created by his own neglect and failure to comply with the law.

CONCLUSION

It is respectfully requested that this Honorable Court deny the Petition for Writ of Certiorari to the U.S. Court of Appeals for the Ninth Circuit. Petitioner's cause of action, if any he had, has long since been barred by the statute of limitations and his failure to file a property statement excused the Tax Collector from sending him notice by mail of the sale and deeding of his property for tax delinquency.

Respectfully submitted,

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TOPICAL INDEX

Page

Point I.—It Was A Simple Thing To Mail Notice To Petitioner's Address 2

Point II.—Erroneous Information: By Mistake Through and In the Circumstances Is inferentially Admitted But Respondent Is Confused As To the Truth Thereof and Positively States as Fact That Which Is Not True 3

Conclusion 8

TABLE OF CASES AND AUTHORITIES CITED

Authorities

California Revenue and Taxation Code,

§ 3358 1

§ 3379 1

C.P.C. § 338 6

28 U.S.C. § 1331 7

IN THE

Supreme Court of the United States

October Term, 1966

No. 953

D. J. MILLER,
Petitioner,

vs.

COUNTY OF LOS ANGELES, a political subdivision of the State of California,
Respondent.

REPLY TO RESPONDENT'S ANSWER TO PETITION FOR WRIT OF CERTIORARI

Going directly to the heart of the "due process issue" in the confiscation of "petitioner's land," under the jurisdictional constitutional question; are two points:

1. Failure to send notice to petitioner as provided by § 3358 and § 3379 of the California Revenue and Taxation Code; and
2. Misinformation in the matter by inadvertent misrepresentation.

The County has shown itself to be somewhat confused in the history of this case. Its memorandum in opposition does not factually clarify its position with respect to these integral points of issue which are summarized as follows:

POINT I.

IT WAS A SIMPLE THING TO MAIL NOTICE TO PETITIONER'S ADDRESS.

In the statement of the case (Petition p. 5), it is shown that the redemption department which processes such tax delinquent property, had petitioner's address available. (No where does the County deny this), and it was used by one of the employees of this Department to write him seeking purchase of this property. Respondent remains inadequately silent as to why it did not or could not follow officially* what one of its employees did unofficially.

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*The Answer (pp. 4 and 5) refers to affiant Mr. Skinner avering that he searched for petitioner's address where it was not but no statement is made about his passing up the Redemption Department where it was easily obtainable.

POINT II.

ERRONEOUS INFORMATION: BY MISTAKE: THROUGH AND IN THE CIRCUMSTANCES IS INFERENTIALLY ADMITTED BUT RESPONDENT IS CONFUSED AS TO THE TRUTH THEREOF AND POSITIVELY STATES AS FACT THAT WHICH IS NOT TRUE.

The essence of the matter of "mistake" first verbal, then corroborated by documentation, is best shown by a nineteen line paragraph consisting of four sentences commencing at the bottom of page twenty-two of respondent's Answer.

This paragraph (with emphasis supplied) is hereby quoted verbatim; then re-quoted sentence by sentence, A. B. C. D., followed by a crux statement of clarifying facts:

> "Petitioner *was advised on January 10, 1962,* that *his property* had been deeded to respondent on October 19, 1960, and he did not file the present action until *almost two years after acquiring* this knowledge. Assuming solely for the purpose of argument that respondent should be estopped from asserting the statute of limitations because petitioner was misled to his detriment, he was not so misled subsequent to *January 10, 1962,* and any *misrepresentations,* if any there were, *were cured* as of that date. If respondent should be estopped, it should only be for such a period not to exceed *one year subsequent to the time* petitioner was

advised of the disposition of his *property;* i.e. up and until *January 10, 1963.* This one-year period would give petitioner the same period of time allowed him by Section 3809 to attack the validity of the deed to respondent and yet, petitioner slept on his rights until December 31, 1963, *almost two years after* he was advised by the Tax Collector that his property had been deeded to respondent."

A. "PETITIONER WAS ADVISED on January 10, 1962, that his property had been deeded to appellee on October 19, 1960, and did not file the present action until almost two years after *acquiring this knowledge.*"

The respondent is in error since it stipulates, as quoted from page 19 of its brief to Court below. (in Petition at pages 5 and 11):

"Appellee would point out that the only misinformation contained in that letter (above Tax Collector letter of January 10, 1962), *is the legal description* contained therein . . .'" (Emphasis supplied).

Patently, the property was not identified by "the legal description" in said letter that was completely different from the true one (See Petition, p. 5). Obviously, therefore, petitioner *did not acquire knowledge"* as respondent mistakenly asserts, on January 10, 1962.

B. "Assuming solely for the purpose of argument that respondent should be estopped from as-

serting the statute of limitations because petitioner was misled to his detriment, he was *not so misled* subsequent to January 10, 1962, and any misrepresentations, if any there were, were cured as of *that date.*"

As proven above, petitioner was truly *misled* subsequent to *January 10, 1962,* because of the admitted "misinformation" which prevented him from knowing the facts about his property involved.

C. "If respondent should be estopped, it should only be so for a period not to exceed *one year subsequent to the time petitioner was advised* of the disposition of his property, i.e. up and until January 10, 1963."

The actual "time" that petitioner was "advised of the disposition of his property" was shortly after *April 30, 1963,* which was the date of the letter from an officer of respondent with true legal description of the property (Petition p. 4 footnote), hence, the action filed December 1963, was well within the "one year period" which respondent concedes should be the case.

D. "This one-year period would give petitioner the same period of time allowed him by Section 3809 to attack the validity of the deed to respondent and yet petitioner slept on his rights until December 31, 1963, almost two years after he was advised by the Tax Collector that his property had been deeded to respondent."

PETITIONER *AGREES WITH* RESPONDENT THAT HE SHOULD BE ENTITLED *TO THE ONE-YEAR PERIOD* FROM *ACTUAL DATE* OF BEING *ADVISED* OF *DISPOSITION OF THE PROPERTY;* BECAUSE, OF THE MISINFORMATION.

Respondent is overlooking the facts: as shown in the Petition (pp. 4, 11), that over a dozen letters were written in the correspondence with its officers in order to be belatedly "advised by the tax collector that his property had been deeded . . .", AND THEN THE ACTION WAS TIMELY FILED.'

Respondent's own summation of the controlling issues, taken in true context with the unusual facts, show that these facts distinguish this case from any cited by respondent; therefore, it is submitted, prove petitioner was clearly deprived of his property without "due process of law," in violation of the "Fourteenth Amendment to the United States Constitution."

Then, there is still the unresolved question of the applicability of § 338 of C.P.C. (sub 4) pointed to in the petition (p. 9, footnote 2), studiously ignored in the Answer.

Most of the citations and points discussed by respondent in its Memorandum are either erroneous or not applicable. It has demonstrated confusion by inadvertently stating as fact that which is not true; but, nevertheless, with such positive persuasion by its

skilled counsel that it also demonstrates how overburdened courts* would tend to accept its statements over petitioner's *pro se.*

Respondent's Answer does not show how or where the District Court adjudicated the constitutional question even though the Appellate Court remanded, as it concedes, pursuant to 28 U.S.C. § 1331, (Answer p. 3), instead in answer, it incredibly states (top of p. 2), "there is no federal question involved . . ."; however § 1331 confers jurisdiction specifically on account of there being a constitutional question.

The District Court made no ruling on the proven "lack of due process" circumstances which were not permitted to be fully advanced since the complaint was not answered, also petitioner was foreclosed from F.R.C.P. discovery proceedings.

It is here contended that civil due process and rights under the Federal Constitution, particularly in a case involving real property confiscated by a governmental entity, under such unusual circumstances, have great importance for review by this Court in a strong ratio along a parallel constitutional vein to the new concepts of criminal due process.

Recent criminal constitutional due process cases have received world-wide attention and discussion. Just a few nights ago, March 16, 1967, of the same day

*Recent news media reports are cited concerning the overburdened district courts as well as appellate courts in general.

petitioner received respondent's Answer, there was such a discussion on "sound-off" public, telephone participation radio program broadcast from (K.C.B.S.) San Francisco, California, wherefrom one of the participants said:

> "Americans should get down on their knees and give thanks for [this court] the Supreme Court."

CONCLUSION

For the reasons stated herein and in the petition, the county should accept the payments for the property *nunc pro tunc.*

Respectfully submitted,

D. J. MILLER,
Petitioner Pro Se.

Box 728
Lake Shore Court
Boulder City, Nevada

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JUL 11 1967
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No.953

D. J. MILLER,

Petitioner,

v.

COUNTY OF LOS ANGELES,
a Political Subdivision of the State of California,

Respondent.

MOTION FOR LEAVE TO FILE PETITION FOR REHEARING OUT OF TIME

Petitioner moves for an Order permitting his Petition for Rehearing, which has already been delivered to the Clerk of the Court, to be filed on the following grounds:

Petitioner belatedly opened a letter sent by surface mail from the printer dated May 25, 1967 (petitioner was out of town the major part of June), stating facts as above outlined and that delivery was not timely.

The delay was apparently caused because the printer was overburdened with work, or through inadvertence, since the

draft of the "PETITION FOR REHEARING" was transmitted to him well ahead of the due date.

In the letter noted above from the printer, it is stated that "the Clerk's Office has advised us that the 20 days extension as requested by you, was reduced to a fifteen day extension . . .".

However, the petitioner was diligent since he airmailed his "draft" so it would reach the printer the first of the week which ended in the deadline of Saturday, the 20th of May, and the said deadline was noted in the correspondence, but apparently the previous advice to the printer of 20 days extension of time was thought to be the extended due date.

Petitioner prays that this Motion be granted in the interest of justice since the essence of his Petition for Rehearing is a mistake or misconception of facts similar to the one involved in the instant matter.

Respectfully submitted,

DUNCAN J. MILLER
Petitioner Pro Se
Box 728
Boulder City, Nevada 89005

CERTIFICATE OF SERVICE

Petitioner certifies copy of the above and foregoing document was sent to Respondent's Legal Department, Irving Taplin, Jr., 648 Hall of Administration, Los Angeles, California 90012, on this, the 11th day of July, 1967.

D. J. Miller